IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 14981 of 2004(H)

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PETITIONER:

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1. M.K.JOYOTHISH KUMAR, AGED 38 YEARS,
   S/O.THIRUVANKOCHUCHERUKKAN,
   PREM NIVAS, KONNAMANKARA MURI, ADOOR VILLAGE.

2. K.BHAVANI, AGED 58 YEARS,
   W/O.THIRUVANKOCHUCHERUKKAN, PREM NIVAS,
   KOHHAMANKARA MURI, ADOOR VILLAGE.

3. M.K.SAILESH KUMAR,
   S/O.THIRUVANKOCHUCHERUKKAN, PREM NIVAS,
   KONNAMANKKARA MURI, ADOOR VILLAGE,

4. M.K.RUPESH KUMAR,
   S/O.THIRUVANKOCHUCHERUKKAN, PREM NIVAS,
   KONNAMANKKARA MURI, ADOOR VILLAGE.

5. M.K.PREMKUMAR,
   S/O.THIRUVANKOCHUCHERUKKAN,
   PREM NIVAS, KONNAMANKARA MURI, ADOOR VILLAGE.

BY ADV. SRI.T.MADHU

RESPONDENTS:

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RAMACHANDRAN ALIAS THAMPI,
S/O.GOPALAKRISHNAN,
RATHEESH BHAVAN, THUVAYOOR NORTH,
MANAKKALA MURI, ADOOR VILLAGE,
ADOOR.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 14981/2004

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 30.5.2003 IN OS NO. 435/2000 ON THE FILE OF THE HON'BLE MUNSIFF COURT, ADOOR.

EXT.P2: COPY OF THE I.A. NO. 1122/2003 IN O.S. NO. 435/2000 FILED BY THE PETITIOENR.

EXT.P3: COPY OF THE ORDER DATED 30.8.2003 IN THE ABOVE I.A. PASSED BY THE HON'BLE MUNSIFF COURT, ADOOR.

**PIUS C. KURIAKOSE, J.**

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**W.P.(C) NO.14981 of 2004**

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**Dated this the 7th day of June , 2007**

**JUDGMENT**

Ext.P2 application submitted by the petitioners/plaintiffs seeking review of an order rejecting the plaint for non remittance of balance court fee was dismissed by the learned Munsiff by Ext.P3 order. The petitioners challenge Ext.P3 on various grounds.

2. Heard both sides. Inviting my attention to the judgment of this court in **Cochin Kazag Ltd. v. Bharath Cartons (2004 (1) KLT page 53)**, the learned counsel for the petitioners would submit that the view of the learned Munsiff that application for review of an order rejecting the plaint is not maintainable is erroneous. But as rightly pointed out by Sri.Sathish Ninan, the learned counsel for the respondent, the learned Munsiff does not say in Ext.P3 order that there is no provision for reviewing an order rejecting the plaint for non remittance of court fee. In fact

Ext.P2 application was not an application for review. It is a combined application for restoration of the suit under Order 9 Rule 9 of Code of Civil Procedure and also for review under Order 47 Rule 1. The learned Munsiff is right in his view that an application for restoration under Order 9 Rule 9 will not be maintainable in respect of an order rejecting plaint for non remittance of court fee since such orders are decrees. The learned Munsiff's view that review can be allowed only if there are errors apparent on the face of the record also cannot be said to be erroneous.

3. Considering the rival submissions addressed at the bar and gauging Ext.P3 order by parameters which are applicable while exercising supervisory jurisdiction under Article 227, it is difficult to say that Ext.P3 is so bad as to be set aside under Article 227. At the same time, considering the maintainability of a petition for review of an order rejecting the plaint for non remittance of court fee as well as on considerations of substantial justice, I am of the view that the petitioners should be granted an opportunity to remit balance court fee and prosecute the suit.

The petitioners are directed to remit the balance court fee within seven days from today before the court below and file a proper application seeking review of the order rejecting the plaint. If such an application is received by the learned Munsiff within two weeks from today and if it is seen that the balance court fee is remitted within the time stipulated above, the learned Munsiff will consider that application in the light of the judicial precedents which may be cited by the parties and pass orders in accordance with law at the earliest, not withstanding Ext.P3.

The writ petition is disposed of as above. No costs.

**PIUS C. KURIAKOSE,**
**JUDGE.**

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